

The consequences of the use made of the power seem to show the same. A licence is usually personal and particular. Regulation 34(3) confers power upon the Competent Authority to authorise an officer or person to issue permits or licences as exceptions to the orders made. Such authorisations would not cover licences and permits issued in such manner or upon such a scale as to render the order nugatory. In this case the Competent Authority himself made the second instrument, but the procedure implies that the Competent Authority claims to be empowered to delegate to anyone he chose power to make an instrument of the extensive character of this licence; that is to delegate wide legislative powers. This second instrument should have been a permit or licence; it so obviously is not that the Competent Authority seems to have been at some loss to know what to call it, and it is therefore called indifferently a "general licence" then a "declaration" and later again a "general licence", but its official title is "Declaration".

In the case cited by Mr. Wee against the Rotherham Justices a similar mistake was made as regards different powers. The power there granted was, as might be supposed, a judicial discretion, but the exercise was of no such discretion in individual cases, deciding each on its merits in the light of its own circumstances, instead the Justices enacted a rule to bind themselves, and through themselves and indirectly, but only indirectly, purported to amend the licensing laws in their own borough. This was a misuse of their power. Their "rule" was declared bad and they were required to hear the applicant's case. Powers of legislation can only be acquired by a clear and express grant and a power to change the general laws of the country are not to be so lightly assumed.

In my opinion therefore the motion is well founded. No judgment should be entered on the verdict, but the proceedings must be set aside, and a judgment of acquittal recorded.

Accused acquitted.

In re WESTERLING.

[Orig. Crim. Juris. (Evans, J.) August 15, 1950]

[Singapore — Originating Motion No. 57 of 1950]

Prohibition — Order of — Extradition proceedings — Practice and Procedure — English R.S.C., O. 59 r. 3(2) — Extradition Acts, 1870 to 1932 — Effect of statement by executive officer with regard to treaties with foreign States.

This was an application by one Raymond Paul Pierre Westerling who was the subject of extradition proceedings commenced at the instance of the Republic of the United States of Indonesia and which were pending before the District Judge and First Magistrate. The applicant applied by Originating Motion for leave to apply for an Order of Prohibition directed to the First Police Magistrate and District Judge of the Colony of Singapore to prohibit him from further proceeding in an application entitled "Extradition Case No. 1 of 1950" which was pending in the first Criminal District Court of the Colony of Singapore against him.

It was submitted on behalf of the applicant (1) that there was no extradition treaty existing between His Majesty's Government and the Republic of the United States of Indonesia and that therefore the rights and benefits provided by the Extradition Acts 1870 to 1906 were not available to the Government of the Republic (2) that even if such an extradition treaty existed no Order in Council had been made applying the extradition acts to the Republic of the United States of Indonesia.

Counsel for the Government of the Republic of the United States of Indonesia raised a preliminary objection to the application contending that the motion paper relating to the ex parte motion for leave to apply for the order sought was not accompanied by any statement in accordance with Order 59 rule 3(2) of the English Rules of the Supreme Court. It was also contended on the substantial matters in issue that the Government of the Republic had succeeded to the rights and benefits of extradition enjoyed by the Netherlands Government.

The Attorney-General appeared at the hearing and handed in the following statement:

"I have to inform the Court on the authority of the Secretary of State for Foreign Affairs that the Republic of the United States of Indonesia has succeeded to the rights and obligations of the Kingdom of the Netherlands under the Anglo-Netherlands Extradition Treaty of 1898 in respect of Indonesia and that the said Treaty now applies between His Majesty's Government in the United Kingdom and the Republic of the United States of Indonesia."

and contended that the question of whether the Crown is in Treaty relations with a foreign state is a matter on which the Court should seek guidance from the appropriate department of the Executive, and whatever may be certified as His Majesty's view of the matter in reply is, not merely evidence of the fact, but is conclusive evidence.

Held, (1) on the preliminary objection that the portion of the Motion paper setting out the grounds of the application could be treated as a statement sufficient to satisfy in the Colony the requirements of Order 59 rule 3(2) of the English Rules of the Supreme Court; (2) whenever the treaty relations of the Crown with a Foreign State are in issue, the Court should seek guidance from the Executive whose views must be taken as conclusive evidence; (3) the views of the Executive on treaty relations may be volunteered to the Court and where the Attorney-General appears and states those views, such statement is equally conclusive evidence; (4) the application of the Extradition Acts depends not only on the existence of an appropriate Treaty but also on an appropriate Order in Council: the statement of the Executive showed that a treaty existed between His Majesty's Government and the Government of the Republic but there was no Order in Council applying the Extradition Acts to the Republic of the United States of Indonesia in regard to the Treaty and accordingly the Courts of the Colony had no jurisdiction to act on any requisition, for the surrender of a fugitive offender, made by the Government of the Republic.

Cases referred to:—

(1) *Duff Development Co. Ltd. v. Government of Kelantan* (1924) A.C. 797.

- (2) *Mighell v. Sultan of Johore* (1894) 1 Q.B. 149.
- (3) *The Sultan of Johore v. Tungku Abubakar and others* (1950) M.L.J. 3.
- (4) *Engelke v. Musmann* (1928) A.C. 433.
- (5) *The Gagara* (1919) P. 95.
- (6) *Luther v. Sagor* (1921) 1 K.B. 456.
- (7) *The Parlement Belge* (1879) 4 P.D. 129 and (1880) 5 P.D. 197.
- (8) *Foster v. Globe Venture Syndicate Ltd.* (1900) 1 Ch. 811.
- (9) *The Zamora* (1916) 2 A.C. 77.
- (10) *West Rand Central Gold Mining Co. Ltd. v. Rex* (1905) 2 K.B. 391.
- (11) *The Fox* (1811), 1 Edw. 311; 2 Eng. Pr. Cas. 61.
- (12) *The Maria* (1799), 1 Ch. Rob. 340.

APPLICATION for an Order of Prohibition.

F. R. N. H. Massey and T. E. Atkinson for the applicant.

C. H. Butterfield (Ag. Attorney-General) and *Murray Buttrose* (Ag. Solicitor-General) for the Crown.

Sir Roland Braddell and *R. H. Green* for the Government of the Republic of the United States of Indonesia.

Evans, J. : — This is an application for an Order of Prohibition directed to the District Judge and First Magistrate Singapore to stay extradition proceedings brought on behalf of the United States of Indonesia for the surrender of Raymond Paul Pierre Westerling on account of crimes said to have been committed in the Island of Java.

No objection has been taken to the nature of the Order asked, but a preliminary objection was taken by Sir Roland Braddell, appearing for the Republic of the United States of Indonesia, to the form of the application on account of certain irregularities, or of non-conformity with the procedure prescribed.

Counsel contended that these irregularities deprived the court of jurisdiction to hear the matter which had come before it. He pointed to section 10 of the Administration of Justice (Miscellaneous Provisions) Act 1938 (1 & 2 Geo. VI C. 63), which provides that rules shall be made prescribing the procedure to be followed in obtaining the orders substituted for the Prerogative Writs. This provision he contended is mandatory. Even if this provision be mandatory on

the rule making body, a question which, I think, might be disputed, yet it would not, for that reason, alter in any way the character of the rules made, which are mere rules of procedure indistinguishable from other rules of that kind. The jurisdiction of this Court is inherent in it at Common Law, or is conferred by statute or by a combination of statute and Common Law, and is not in my opinion to be taken away by any ordinary rule of procedure. In considering the nature and gravity of any non-observance of a rule of procedure, it is always right to bear in mind that the principal purpose of such rules is to bring the necessary parties before the Court, with a knowledge of the points at issue and in a position to reply thereto. If therefore the proper parties are before the Court with an opportunity of being heard and on proper notice any non-observance would seem to me of minor importance. No allegation was made that any party was taken by surprise, or put to any expense and no adjournment was asked.

The substance of the objection was that the motion paper for the leave to apply was not accompanied by a statement in accordance with Order 59 rule 3 (2), Rules of the Supreme Court which here apply. This statement, it is said, is in the nature of a pleading, and the applicant is strictly confined to the grounds of his application set out therein. In this case the motion paper set out as the one and only ground of the application that "the said Extradition Case No. 1 of 1950 relates to an application at the suit of the Government of the United States of Indonesia for the extradition (pursuant to the Extradition Acts 1870 to 1906 of the United Kingdom) of the said Raymond Paul Pierre Westerling to the said United States of Indonesia which is a country and/or territory to which the said Extradition Acts 1870 to 1906 of the United Kingdom do not apply, and that the arrest of the said Raymond Paul Pierre Westerling pursuant to the above-mentioned Warrant and the proceedings against him in the First Criminal District Court of the Colony of Singapore as above-mentioned are therefore illegal for want of jurisdiction."

The extent of this pleading is, therefore, very limited. Sir Roland Braddell referred to the Practice Note in Weekly Notes of 4th March 1939 at page 76 which itself refers to a case of non-observance of this rule. In that case the affidavit merely stated that the matters set out in the statement were true, and did not further verify the facts relied on. The Court required an affidavit exhibiting the statement and not only (as it would seem) referring thereto.

In this case the affidavit filed refers specifically to no statement, there being none. Some matters contained are according to certain of the applicant's contentions matters of law and might be regarded as the grounds. According to the Attorney-General's contention these matters are in this Court matters of fact. Though the facts may not be peculiarly within the deponent's knowledge, they are the facts on which he relies and no real objection was taken to the substance of the affidavit. Sir Roland did allege that he was prejudiced by the grounds being unconfined, by their speaking incorrectly of the Acts applying to a country and by the reference to Extradition Acts 1870-1906 instead of 1870-1932, but I could find no real prejudice in this. I intimated that I was prepared to treat the portion of the paper setting out the relief and the ground as a statement, by which means the parties would seem sufficiently protected from enlargement of the claim, and in these circumstances, having regard to the very limited ground and the counsel responsible for the application not wishing to amend, I thought it proper to hear the arguments of parties. Sir Roland Braddell stated that he did not waive his objection and might renew it, and this, of course, he is perfectly free to do. He later objected — or wanted an objection noted — to an affidavit filed by the applicant at the desire of the Attorney-General and correspondence exhibited thereto. Little turns on these letters.

The ground was argued in two ways arising from the scheme of the Extradition Acts 1870-1932, of which Acts, however, that of 1870 alone is relevant. That Act does not deal with a purely internal matter or one which can be regulated by Municipal law alone. Extradition imports two states, one requiring extradition and one from which the surrender of an alleged offender is required. It also touches the personal liberties of the alleged offender. The Act, though it may be capable of general application, of itself may be said to apply to nothing. Before it can be made to apply, there must be states agreeing to mutual extradition. The Act, therefore, contemplates a Treaty, or arrangement, entered into with another state desiring to establish a system of extradition, and it accordingly goes on to authorise His Majesty in Council to make an order, reciting or embodying the Treaty, and applying the Acts in the case of that state which is the other party thereto. Any act taken by officers of the state, or by others, for the purpose of extradition against an individual must be under and in accordance with the Statute so applied.

The applicant alleged that there was neither Treaty, nor Order in Council, with the United States of Indonesia, the requisitioning state in this case, under or in respect of which any action could be taken under the Statute. It is not disputed that there is no specific Treaty entered into with the United States of Indonesia for this purpose, and, consequently, there is no Order in Council applying the acts to that country in regard to that treaty. The argument on the first point was partly in anticipation of possible cases to be made, and partly in reply to a statement in the correspondence to which I have referred, that the United States of Indonesia is a "successor" of the Netherlands. The argument was necessarily nebulous, as there were several points, such as the date, and mode, of His Majesty's recognition of the United States of Indonesia, and whether His Majesty's Government had consented to any devolution of rights which might be affected by Article 5 of the Draft Agreement on Transitional Measures made at the Round Table Conference at the Hague on 2nd November, 1949, on which it was suggested, the Court would have to seek information in some way or another. At an early stage I raised the question of how far these matters could be tried by this Court, since the view of His Majesty's Government would seem to be clearly inferable from the action already taken, and of how far they were relevant to the matter before it. Counsel however contended (and rightly) that, if there were no treaty, the Acts could not be invoked, and the matter should be determined beyond doubt. He argued that the United States of Indonesia was a new, and sovereign state and that whatever the Netherlands might have done to give it "succession" to itself, the acts of these two states could not affect a third.

I do not propose to set out, or to consider, these arguments at length, as in my opinion, they are completely answered by the contentions put forward by the Attorney-General, and by the statement read, and put in, by him as a certificate of the view of His Majesty. This statement is to the following effect :

"I have to inform the Court on the authority of the Secretary of State for Foreign Affairs that the Republic of the United States of Indonesia has succeeded to the rights and obligations of the Kingdom of the Netherlands under the Anglo-Netherlands Extradition Treaty of 1898 in respect of Indonesia and that the said Treaty now applies between His Majesty's Government in the United Kingdom and the Republic of the United States of Indonesia."

The Attorney-General contended that the question of whether the Crown is in Treaty relations with a foreign state is a matter on which the Court should seek guidance from the appropriate department of the

Executive, and whatever may be certified as His Majesty's view of the matter in reply is, not merely evidence of the fact, but is conclusive evidence. The views of His Majesty may be ascertained not only in reply to specific inquiries by the Court but may be volunteered to the Court, and in any matter in which the King's Attorney-General appears and makes a statement of those views, such statement is equally conclusive. The Court is so bound by the views of His Majesty on all matters affecting the Crown's relations with Foreign States and on all questions of International Law.

In support of the first proposition he cited numerous dicta in the *Duff Development Company v. Government of Kelantan*⁽¹⁾, *Mighell v. Sultan of Johore*⁽²⁾ and other cases to which it is unnecessary for me to refer. The point is one which was recently debated, and contested, at length in these Courts in *The Sultan of Johore v. Tungku Abubakar & Ors.*⁽³⁾ and in that case (pp. 22-26) I expressed an opinion which was entirely in accordance with the view put forward by the Attorney-General, and from which I see no reason to retract. On his second proposition he referred to *Engelke v. Musmann*⁽⁴⁾, and *The Gagara*⁽⁵⁾, and other cases. While the Courts have in some cases referred to an established procedure of reference by the Court, as Lord Cave in the *Duff Development* case (page 805) spoke of the established practice of the Courts seeking information in this way when any question of the sovereignty of a foreign state is raised; yet this does not imply that no other procedure is open, or that one mode of procedure is peculiarly applicable to a specific subject of inquiry. In *Luther v. Sagor*⁽⁶⁾ Roche J. himself caused inquiries to be so made, although letters from the Foreign Office had been obtained by the parties and were before him, but he did so, not to comply with any practice, but in case ampler or further information might then be available. There can be no doubt that a concurrent practice of accepting in the same sense information conveyed to the Court by the Law Officers existed and was in fact followed in the *Parlement Belge*⁽⁷⁾ which is perhaps the most important case on these matters, and in which the question raised as to the international convention and as to the possession of the vessel by a reigning sovereign were accepted on the Attorney-General's pleading, and this is a question closely analogous to that referred to by Lord Cave. It seems that there is no prescribed form of proof, but the Court is bound by any intimation of His Majesty's view by whatever channel he pleased to communicate it.

Sir Roland Braddell in dealing with the same matter spoke of foreign affairs as the subject of such

enquiry and conclusive evidence. He went on to discuss Acts of State which could not be questioned by legal process as giving rise to no right of action in tort or contract. He did not, as I understood him, contend that such a plea could defeat a subject, in respect, at least, of an act in this country, or that the applicant, being an alien, his arrest might be so excused. He went on to consider the King's Treaty making powers and spoke of their making as acts of state. He admitted that such treaties could not alter the law, but urged that the Government making them, would probably be in a position to obtain any necessary change of the law from Parliament. No question, however, of His Majesty's power to make Treaties, has been raised, the only question is whether the necessary treaty has, in this case, been made — or more generally whether such treaty relations exist.

The Attorney-General's third proposition goes further than Sir Roland's arguments. It is thought necessary in order to cover the statement that the Republic has succeeded to the rights and obligations of the Kingdom of the Netherlands under the Treaty of 1898. This might be regarded as a conclusion drawn from the application of rules of International Law, and the application of rules of law might be thought a function of the Courts. He rested this proposition on *Foster v. Globe Venture Syndicate*⁽⁸⁾ and *The Zamora*⁽⁹⁾. I do not think these cases give his proposition much support. The subject of inquiry in the first was where a boundary exists in fact, without, it would seem to me, any reference to ownership, as the Attorney-General suggests, or to the legal title at any law to land on either side thereof. It might be a boundary of sovereignty, and not of ownership, nor of legal possession. The second case seems rather against him. The question turns on what is here meant by International Law. Counsel for applicant had referred to the definition of Lord Russell of Killowen adopted by Lord Alverstone and the Divisional Court in *West Rand Central Gold Mining Company Ltd. v. The King*⁽¹⁰⁾ at p. 407 "it is the sum of the rules or usages which civilised States have agreed shall be binding upon them in their dealings with one another". From which and from a general view, it might be thought that, apart from express agreement, it is not a law having moral authority, or as embodying ethical principles commanding obedience, but mere historical generalisations from conduct. It would, in a fuller investigation, be necessary to enquire how far "rules" are anything more than deductions from repeated acts, or from usual conduct. As to such rules and as to usage, the generality of the conduct would be immaterial as the

Courts would be bound to accept His Majesty's views of such acts, and, in general, the acts of His Majesty's Government. On this view there would, therefore, be little difference between the first proposition and the third. On the other hand, the proposition in its full extent seems directly contrary to the principal point in *The Zamora* case⁽⁹⁾ cited, which I should have understood to be the Privy Council's rejection of Lord Stowell's dictum in *The Fox*⁽¹¹⁾ that Orders in Council in the Prize Court are analogous to Statutes in the Common Law Courts, and of the apparent opinion that the Crown could legislate by Order in Council, and its acceptance of his other opinion in *The Maria*⁽¹²⁾ that the Prize Court is a court applying International Law, though there are passages suggesting that the Privy Council's opinion is confined to cases in which the Crown is a party. The contrary proposition was Lord Robert Cecil's second proposition in *West Rand Central Gold Mining Company Ltd. v. Rex*⁽¹⁰⁾ which there received but very partial acceptance. The proposition may be too wide, but it might be accepted for the purposes of this case, for if the Court be bound by the Crown's recognition of the Republic, it must also accept what the Republic is recognised as; only such full acceptance would seem to me consistent with the full meaning of the majority opinions in the *Duff Development* case. I think that all the matters set out in the statement quoted must be accepted and are conclusively established.

The Attorney-General went on to argue on an assumption that the statement was not accepted as conclusive. It would be unnecessary to follow those arguments, and his examples of succession, were it not that they throw some light on the application of the Acts, and introduced some illuminating cases not, in my opinion, very helpful to his case. It is not, nor could it be, disputed that the Extradition Acts were applied to what are now the territories of the Republic, and in particular, to Java. The Attorney-General referred to sections 2, 5 and 25 of the Act of 1870. There can be no doubt that under these sections the Acts were applied to Java, but they were not applied to Java as such but only as being a colony of the Netherlands. Had it not been a colony the provisions would not have operated. The Attorney-General argued that the Acts were applied to those territories, and continued to apply. The Act does not speak of territories, it speaks consistently of "states" by which I can only understand sovereign states including therein such areas as section 25 requires.

In this connection he referred among other instances to some furnished by the dissolution of the

Austro-Hungarian Empire. A treaty was made on 3rd December, 1873, with the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary and an Order in Council applying the Acts was made on 17th March, 1874. After the 1914-1918 war notices were given to Austria and Hungary reviving this treaty. We have no clear information as to these notices, but they are understood to be designed to prevent, or remedy, any abrogation affected by war. In the same way a Treaty was made with Serbia on 6th December, 1900, which continued with Yugoslavia. Later Orders in Council, including No. 971 of 30th July, 1923, recited such Treaty as still existing. The Attorney-General referred to several examples. The Attorney-General was arguing, on the assumption that Austria after the war was a different person at International Law from the party to the treaty, that a treaty made with one party might continue with another, and submitted that a recital in an Order in Council, relying on a dictum in *The Zamora*⁽⁹⁾ at page 98, is binding on the Court.

I am unaware of any authority for the view that there is a breach in the historical continuity of the Austrian or Hungarian State; changes of constitution, of name, or of area, are of varying importance and would not necessarily change the personality of a state. To me the cases would seem to imply the opposite, and the only apparently relevant case among the successors to the Austro-Hungarian Empire, would have seemed to be Czechoslovakia. On that case we have no more certain guidance than that in Sir Arnold McNair's book *Law of Treaties* at page 453 where he says that he believes that in the view of the British Government Czechoslovakia despite reference in a Treaty of 1919 with the Allies to the Kingdom of Bohemia Markgraviate of Moravia and Duchy of Silesia is no successor to the Austro-Hungarian Empire, but he gives no reason for that belief; and also that guidance afforded by the making of a new treaty and a new Order in Council with Czechoslovakia on 11th November, 1924, and on 20th November, 1926.

It might seem hard to draw such distinction between the Republic and Czechoslovakia as to rights of succession. The latter had been in the nature of an ally in the preceding war, and was named in a form as King of Bohemia, etc., in the treaty in question. The treaty applied to the Republic merely as a colony. It remains in some treaty relations with the Netherlands, called a Union, but is a separate Sovereign State. The cases would seem to show three possibilities: a continuing state, a "successor" contemporaneous with its predecessor and a new state which is not a successor.

The Austrian cases on this point may not therefore be strictly apposite, but on the other hand, the question of succession being concluded, they may yet provide some analogy as to this theory of the continuing territorial application of the act.

My conclusions from all this are the opposite of those of the Attorney-General. It would seem to me that, in the case of Austria and Hungary, the same treaty and order continued, although originally made jointly with a dual monarchy, and despite the reduction in size; while, in the case of Serbia, the same state under the same king was recognised as continuing in Yugoslavia. In Czechoslovakia where a new state arose a new treaty and a new Order were made, although had that state merely been recognised as a "successor" all that would have seemed needed, according to the Attorney-General's case, would have been a notice similar to those given to Austria and Hungary. Taking the territory of the Empire, before the war the acts were applied in respect of all in accordance with the Imperial treaty. There was, however, no continuing application to territory, except where there was continuing state personality, but in Czechoslovakia where the acts had presumably ceased to apply new provisions had to be made, while in those parts absorbed by Serbia an old, and, in a sense, competing, treaty and order took the place of the Imperial treaty and its corresponding order. In my opinion, application depends on the existence of an appropriate Treaty and an appropriate Order in Council. The statement affirms such a Treaty.

From this Statement it would also appear that there may be at International Law some one, unknown, I believe, to other law, in the nature of a *haeres viventis*. It may not be for this Court to discuss his qualities, but such a successor must, it would seem, be a still more separate and distinct person than the more usual person claiming by succession; for he is contemporaneously existent with his predecessor. The word succession otherwise suggests an analogy to natural persons. It is by no means unusual for a successor to be determined by a deceased person's personal law, or the law of his domicile, but the construction of a grant to the predecessor, or of his contracts, would be determined by the law of the land. The fact that a successor may be determined elsewhere by International Law presents no great difficulty. None of the parties had much to say as to the Order in Council, though it appears a matter of first practical importance. The only Order in Council on which the Republic could rely is that of 2nd February, 1899, corresponding with the treaty referred to in the Statement. Mr. Massey

drew attention to the Order in Council and to the operative penultimate paragraph which applies the Acts to the State of the Netherlands only; for it reads:

"Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to Her by the said recited Acts, doth order, and it is hereby ordered, that from and after the fourteenth day of March, 1899, the said Acts shall apply in the case of the Netherlands, and of the said Treaty with the Queen of the Netherlands".

Sir Roland Braddell seemed unwilling to refer to the Order in Council except in answer to questions. He contended, as I understood him, that the treaty was the most important, and only really operative, instrument; and he repeatedly referred to that part of section 2 of the Act of 1870 which provides "Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement."

It may be conceded that the treaty is the most important instrument, without which the Act would be a dead letter, and no Order in Council called for. Nevertheless, by itself, it effects nothing practical, and on it no man under the protection of the law could be arrested, and against him no proceeding could be brought. The powers to extradite all flow from the Act, and until the Act is applied the treaty remains in the clouds, or, at least, its existence and force are confined to the realms of international law. To look at the matter from a practical point of view; proceedings can only be instituted through sections 6 and 7. If requisition be made, the question at once arises whether the requisition be made by a state to which the Act has been applied, and, to determine this recourse must be had for the reasons stated, not to the Treaty, but to the Order in Council. It must be read to be understood, and it must be construed to ascertain its full meaning.

This Order in Council is an ordinary instrument of subordinate legislation, it is to be construed by this Court, and in accordance with the ordinary canons of legal construction. So read I should have thought its meaning beyond doubt. The state in the case of which the Act is applied thereby is the Netherlands and no other. It is not in the case of the Republic of Indonesia, nor in that of the Netherlands and its successors, contemporaneous or by substitution. The Order in Council, just as that in the case of Austria, is still capable of application. The Court might be obliged to construe the treaty as part of the Order in Council, but, for this purpose, it does not seem necessary to go beyond the penultimate paragraph. It is a principal canon of interpretation, which has been

called the golden rule, that the grammatical and ordinary sense of the words is to be adhered to and by this means the intention of the maker or lawgiver must be sought. The ordinary meaning of Netherlands would seem clear enough. I can find nothing here, or for that matter in the rest of the Order, which could lead one to suppose that the draftsman, or the persons making the order contemplated the successors of the State of the Netherlands or any state other than the Netherlands. It would seem to me quite clear that they have not used language capable of including any one else. The provision is in essence, tantamount to a grant of the rights, powers and facilities afforded by the Act, and that grant is to one person only, by name, which person still exists. It may well be that diplomatic language is sufficiently elastic to include the Republic in the benefits of the Treaty, but there seems to be no Order in Council applying the Act to the Republic in respect of this Treaty, or of any other treaty.

My opinion is confirmed by other considerations. The powers under the Extradition Acts are statutory powers, and should be exercised strictly in accordance with that statute, whether it be powers of officers acting under section 6, or of making orders under section 2. Parliament, in committing the application of the acts to the Executive, has yet required that all orders made should within six weeks be laid before Parliament. It does not, as Sir Francis Piggot states in his book "Extradition" at page 40, in a passage quoted by Sir Roland Braddell, expressly reserve any powers of modifying the order, but there can be no doubt that it has full power to secure the revocation of any order it disliked. What use is made of this provision is immaterial, there is yet a tacit assent to every Order in Council. I agree with Mr. Massey that to treat the Acts as applied to a state, whose name has never appeared in any Order laid before Parliament, would vitiate this procedure and be an abuse of the power of applying the Statute. It is true that an objection to an order on this ground might be an objection to its validity, and so barred by section 5 of the Act of 1870, as, it is said, and I think wrongly, is my mere construing of the Order. Just as there is no evidence of any intention by the King in Council to apply the acts to the Republic, so also I can see no corresponding tacit assent of Parliament. Moreover, the contrary contentions would render the law liable to change by what the Attorney-General tells us, I think rightly, is a legal use of the prerogative in violation of those very principles which Sir Roland Braddell cited from pages 15, 29 and 32 of Sir Francis Piggot's book. It would

also imply that the law is no longer to be ascertained from a perusal of the instruments in which it is supposed to be embodied, but can only be surely ascertained by what is, in practice, an application to the Foreign Office for its latest opinion of what certain terms mean. This is obviously contrary to all sound legal principles, and to all the history of our jurisprudence.

In these circumstances it would seem to me that any proceedings based on a contrary assumption are misconceived and I think that the Order applied for should be made.

*Order accordingly with
costs against the Crown.*

Su. [1952] m-l-j. 27.

**KANG BARK TENG AND ANOTHER v. LEE
AH ONG AND ANOTHER.**

[Orig. Civ. Juris. (Evans, J.) December 15, 1950]

[Singapore—Suit No. 636 of 1950]

Negligence—Motor accident—Death of passenger—Liability of party responsible for accident—Quantum of damages—Civil Law Ordinance (Cap. 42)—Civil Law Amendment Ordinance, 1940.

This was an action brought by the administrator and administratrix of one Ng Seow Hee whose death was alleged to have been caused by a street accident which in turn was attributed to the negligence of the defendants or their servants in driving a car and lorry respectively.

The deceased, who left a widow, a son, and a mother, was an unlicensed hawker of pork and for some years had been employing the second defendant with his lorry to convey pig carcasses to his stall. At the time of his death the deceased was returning in the second defendant's lorry from the slaughter house and while he was so returning the collision between the lorry which was driven by the second defendant and the motor car driven by the first defendant's son occurred.

Held, (1) that damages must be based on the earning capacity and opportunities of the deceased; (2) that on the facts both drivers had been guilty of negligence to some degree and, as the first defendant had done something which rendered the occurrence of an accident unavoidable although at the material time the accident seemed yet to be avoidable, that the first defendant was solely responsible for its occurring and was therefore liable for the whole of the damages awarded to the plaintiffs and the dependants of the deceased.

Cases referred to:—

- (1) *Davies and another v. Powell Duffryn Associated Collieries, Ltd.* (1942) A.C. 601.
- (2) *Bishop v. Cunard White Star, Ltd.* (1950) 2 All E.R. 22.
- (3) *Lory v. Great Western Railway Co.* (1942) 1 All E.R. 230.